growth than BET on Jazz assumed in its original business plan -- with penetration of 20 million not being attained until at least its seventh or eighth year of operation, if not later -- it would at least give BET on Jazz a chance of reaching break-even and ultimate commercial viability. Absent a transition provision of the type proposed here, the Commission's adoption of its proposed leased access formula would be certain to cause the failure of our network. In the following paragraphs, I will explain the reasons for the principal features of our suggested transition plan.

7. First, should the FCC adopt its proposed cost/market formula, it will take at least six years for BET on Jazz to increase distribution on cable systems and other multi-channel video program distributors, and to develop a level of subscriber recognition and loyalty -- assuming that our proposed transition plan is also adopted -- sufficient to withstand the impact on distribution that full application of the Commission's reduced-rate formula to all set-aside channels inevitably will cause. Moreover, it will be at least six years until cable systems' channel capacity will have grown enough both to accommodate the full complement of leased access set-aside channels *and* to enable cable operators to carry start-up networks such as BET on Jazz in sufficient numbers to support the networks' continued operations. For these reasons, we are proposing that the overall transition period be no less than six years.

8. Second, a reduced-rate formula should not apply to any cable system with 72 or fewer activated channels until the expiration of the six year transition period, or until system upgrades cause channel capacity to exceed 72 channels, whichever occurs first. Cable systems with fewer 72 or fewer activated channels generally are channel-locked, having virtually no available channel capacity on which to add new programming networks such as

BET on Jazz; indeed such systems generally are still at the phase of adding more established programming networks such as A&E or Discovery. If the Commission's proposed formula were to be applied to such systems, any remaining chance of BET on Jazz being carried by any of these systems would be lost, and BET on Jazz would likely be bumped by those few systems in this size group that do carry the network. Cable systems with 72 or fewer channels cannot be subjected to the new rate formula if BET on Jazz, and other start-up networks, are to succeed in increasing distribution to the level necessary to become commercially viable.

9. Third, the initial years of the six year transition period are the most critical to the success of BET on Jazz and other start-up networks. BET on Jazz is currently scheduled to launch on a number of systems, and is in the midst of negotiations with others. To date, the mere pendency of the Commission's leased access proposals has chilled cable systems' willingness to enter into, or even discuss, carriage agreements with the network. In order that the Commission's adoption of a reduced leased access rate formula not sabotage the network's completion of both its scheduled launches and its current negotiations, BET on Jazz needs at least one year in which the new rate formula would not be applied to cable systems, so that such burgeoning relationships not be undermined.[3]

10. Fourth, it is also critical to the success of BET on Jazz that the rate formula be phased in gradually over years two through six, such that application of a reduced leased access rate formula would apply less in early years, and then to an increasing percentage of cable systems' set-aside requirements in each successive year. In particular:

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[3] We do not seek this one-year hiatus with cable systems that have 130 or more channels, since such systems already possess sufficient capacity to accommodate increased leased access obligations without foregoing their ability to carry start-up networks like BET on Jazz.

a. A reduced-rate formula should be phased in for systems with between 73 and 89 activated channels, beginning with application of the revised rate to 10 percent of channel set-asides by the end of year two, increasing to 25 percent by the end of year three, 45 percent by the end of year four, 70 percent by the end of year five, and 100 percent by the end of year six. Start-up programming networks have their greatest chance of being carried, if at all, by cable systems with more than 72 activated channels. Application of the Commission's proposed formula to cable systems of this size without a graduated transition would result in BET on Jazz, and other start-up programming networks, being bumped from, or not being added by, such systems during the next several years, the most crucial for BET on Jazz and other new networks.

b. The Commission's proposed formula should also be phased in for systems with between 90 and 129 channels, albeit at a slightly accelerated rate, beginning with application of the revised formula to 15 percent of channel set-asides by the end of year two, increasing to 35 percent by the end of year three, to 60 percent by the end of year four, to 90 percent by the end of year five, and to 100 percent by the end of year six. Systems of this size are also crucial to the ability of BET on Jazz to obtain distribution. However, because of their greater channel capacity, it would be possible for such systems to introduce the Commission's proposed cost/market formula at a slightly accelerated rate without inordinately interfering with the launch of new networks such as BET on Jazz. This factor has been reflected in the increased rate of transition.

11. Finally, BET on Jazz believes that it is not necessary to have any delay in implementation of the Commission's proposed formula to cable systems with 130 or more channels. Such systems would appear to have adequate capacity to immediately introduce a

revised leased access formula without significantly impacting their carriage of start-up networks.

12. The transition provision described herein should not be deemed to indicate approval of BET on Jazz, in any manner, of the Commission's proposed leased access formula. BET on Jazz opposes that formula, and alternatively believes that, if the current maximum implicit fee formula is to be revised, the formula proposed by NCTA should be adopted instead. It is only in the event that the FCC rejects our position, and goes forward with its proposed cost/market formula, that we propose the adoption of the foregoing transition plan.

13. Finally, in the event that the Commission does not adopt its cost/market formula, but adopts some other formula (including the NCTA formula) that nonetheless has the effect of reducing fees for leased access from current maximum implicit fee rates, BET on Jazz submits that the Commission must include an appropriate transition provision consistent with the transition plan described above. Any such transition plan should take into consideration the extent to which the current maximum implicit fee formula is reduced, and should tie implementation of the new formula to growth in cable systems' channel capacity. As above, such transition plan should include a first year hiatus during which the revised leased access rate formula would not be applied to leased access channels on any system having fewer than 130 channels, and should introduce the application of the new formula in years two through six on a graduated basis.

I, Jefferi K. Lee, certify, under penalty of perjury, that the foregoing information is true and correct to the best of my knowledge, information and belief.

Jefferi K. Lee

May 31, 1996